

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ENBRIDGE ENERGY, LIMITED
PARTNERSHIP,

Plaintiffs,

Case No. 1:20-cv-1141

v

HON. JANET T. NEFF

GRETCHEN WHITMER, et al.,

Defendants.

STATE OF MICHIGAN, et al.,

Plaintiffs,

Case No. 1:20-cv-1142

v

HON. JANET T. NEFF

ENBRIDGE ENERGY, LIMITED
PARTNERSHIP, et al.,

Defendants.

**STATE PARTIES' BRIEF IN SUPPORT OF MOTION TO ENFORCE
MARCH 19, 2021 NOTICE OF APPOINTMENT
OF FACILITATIVE MEDIATOR**

**INTRODUCTION AND CONCISE STATEMENT OF REASONS
IN SUPPORT OF STATE PARTIES' POSITION**

Defendants Gretchen Whitmer, et al. in Case No. 1:20-cv-1141 and Plaintiffs
State of Michigan, et al. in Case No. 1:20-cv-1142 (collectively State Parties), by
their undersigned counsel, pursuant to Local Rule 7.1(a), submit this Brief in
support of their concurrently filed Motion to Enforce March 19, 2021 Notice of

Appointment of Facilitative Mediator (“Notice”). (Case No. 1:20-cv-1141, ECF No. 20, PageID.131–132; Case No. 1:20-cv-1142, ECF No. 25, PageID.318–319.)

As set forth in the Motion, the Notice was entered by the Court through the Clerk of the Court and Alternative Dispute Resolution Administrator. The Notice established the terms and conditions under which the voluntary facilitative mediation initiated in this case was to proceed, consistent with Local Civil Rule 16.3 and the facilitative mediation Program Description adopted by the Court. The Notice and Program Description provide that after the mediation session is completed, the mediator may only file a brief report identifying the participants in the mediation and whether a settlement was reached.

As further set forth in the Motion, the last scheduled mediation session took place on September 9, 2021 and was completed without a settlement. (Motion ¶7.) Notwithstanding the completion of the mediation session, the facilitative mediator appointed in this matter has recently informed the Chief Legal Counsel for the Governor of Michigan, one of the parties in this case, that the mediator intends to soon file or submit to the Court a report other than that provided for in the Notice and Program Description, including recommendations to the Court concerning continuation of the mediation over the objection of the State Parties. (Motion ¶8.)

As further set forth in the Motion, the actions proposed by the mediator violate the terms and conditions of the Notice in at least two ways. First, the report or other submission that the mediator has stated he intends to file is not authorized by and would violate the specific limitations on post-mediation reporting

established in the Notice and Program Description. (Motion ¶10.) Second, the mediators' proposed action could violate the confidentiality requirements and principles established in the Notice and Program Description. (Motion ¶11.)

RELIEF REQUESTED

For these reasons, the Motion requests the following relief to enforce the terms of the March 19, 2021 Notice:

- a. Entering an order prohibiting the mediator from filing or submitting to the Court any report or document other than that authorized in the Notice, i.e., "file a brief report with the ADR administrator, stating *only* who participated in the mediation session and whether settlement was reached" (emphasis added);
- b. Striking any other report or document filed or submitted by the mediator following the completion of the mediation session on September 9, 2021;
- c. Scheduling an in-chambers conference only with the parties and the Court in the event the Court wishes to further consider this motion; and
- d. Granting any other relief the Court finds appropriate and just under the circumstances.

Respectfully submitted,

Dana Nessel
Attorney General

/s/ Robert P. Reichel

Robert P. Reichel (P31878)
Daniel P. Bock (P71246)
Assistant Attorneys General
Attorneys for Plaintiffs
Environment, Natural Resources, and
Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664

Dated: September 14, 2021

CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on September 14, 2021, I electronically filed the above document with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record. A copy of the above document was also served via first-class mail on the Hon. Gerald E. Rosen (retired) by mailing to: JAMS, 150 West Jefferson St., Suite 150, Detroit, MI 48226 and by email to:

grosen@jamsadr.com.

/s/ Robert P. Reichel

Robert P. Reichel (P31878)
Daniel P. Bock (P71246)
Assistant Attorneys General
Attorneys for Plaintiffs
Environment, Natural Resources, and
Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664

Dated: September 14, 2021